

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**DANIEL L. SCHLAGLE,**

**Plaintiff,**

**v.**

**ARTISAN EARTHWORKS, LLC.,  
ANDREW SMITH HOMES, LLC  
d/b/a SMITH & GILL HOLDINGS, LLC,  
and ANDREW SMITH,**

**Defendants.**

**Case No. 09-2335-CM**

**MEMORANDUM AND ORDER**

Plaintiff Daniel Schlagle alleges multiple claims against defendants Artisan Earthworks, LLC., Andrew Smith Homes, LLC, and Andrew Smith. Defendants filed a motion to dismiss (Doc. 8), seeking dismissal of each of plaintiff's claims. In response to the motion to dismiss, plaintiff requests leave to file an amended complaint. In their reply to the motion to dismiss, defendants allege that amendment would be futile. Plaintiff has not had the opportunity to respond to the arguments against his amendment.

After reviewing the record, including plaintiff's proposed amended complaint, the court finds that to achieve the "just, speedy, and inexpensive determination" of this action, Fed. R. Civ. P. 1, plaintiff should file a proper motion to amend pursuant to Rule 15 of the Federal Rules of Civil Procedure. Plaintiff's proposed amended complaint addresses—and, if granted, may resolve—several of the issues

raised in defendants' motion to dismiss.<sup>1</sup> Addressing the issues raised in defendants' motion to dismiss at this stage of the proceeding would only prolong this matter and create duplicative work for the court and the parties, creating judicial inefficiency and additional expense for the parties.

In light of the above, the court denies defendants' motion to dismiss without prejudice. If plaintiff wishes to amend his complaint, he shall file a motion to amend under Rule 15 no later than January 19, 2010. If plaintiff does not file an amended complaint, defendants may re-file their motion to dismiss the claims asserted in the pending complaint (Doc. 1).

**IT IS THEREFORE ORDERED** that defendant's Motion to Dismiss (Doc. 8) is denied without prejudice.

Dated this 29<sup>th</sup> day of December, 2009, at Kansas City, Kansas.

s/ Carlos Murguia  
**CARLOS MURGUIA**  
**United States District Judge**

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<sup>1</sup> For example, defendants seek dismissal of plaintiff's 42 U.S.C. § 1983 claim; plaintiff's proposed amended complaint does not allege this claim.